IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: **Matt Ayers**   ART UNIT: 2144

SERIAL NO.:   **09/575,839**   EXAMINER: **Thanh Nguyen**

FILED: **05/22/2000**

FOR: **Method and System for Directing
        Requests for Content to a
        Content Server Based on
        Network Performance**

ATTORNEY DOCKET NO.: 52224/296056

Commissioner for Patents
Mail Stop Appeal Brief
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF TO EXAMINER'S SUPPLEMENTAL ANSWER

Sir:

This Reply Brief is submitted under 37 CFR § 41.41(a) in response to the
Examiner's Supplemental Answer mailed on November 14, 2007.

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I.   Reply to Examiner's Grounds of Rejection

For each rejection under 35 U.S.C. § 103, the Examiner's Answer must "state the ground of rejection and point out where each of the specific limitations recited in the rejected claims is found in the prior art." MPEP 1207.02(A)(9)(d)(i).

The Examiner alleged that Fig. 1 of Colby "shows directing the network client to content servers" and relied upon Fig. 1 of Colby to reject the element of Claim 1 that requires otherwise, directing the first network client to a said one of said content servers . . . based on communication between a second client, that is physically proximate to the first network client, and one or more of the plurality of content servers. The Examiner's grounds of rejection do not address a second client that is proximate to the first network client or using communications between a second network client and a plurality of servers to select one of the servers for the first network client. Claims 12, 33 and 44 contain similar elements and the Examiner simply reiterated the arguments used to reject Claim 1 to reject Claims 12, 33 and 44. The Examiner's grounds of rejection for Claims 1, 12, 33 and 44 fail to point out where in the prior art the elements of (i) a second client that is proximate to the first network client, and (ii) using communications between a second network client and a plurality of servers to select one of the servers for the first network client are found.

Although the Examiner is required to reevaluate the Examiner's position in light of the arguments presented in the brief, it appears that the Examiner simply reiterated the rejections made in the Office Action dated June 30, 2005 in the

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Examiner's Grounds of Rejection.

II. Reply to Examiner's Response to Arguments

The Examiner's Supplemental Answer does not address each of the arguments

presented in the Appeal Brief.[1] The Appeal Brief argued that neither Colby nor

Spicer describe selecting a content server for a first client based on measurements

associated with another client that is physically proximate to the first client. *See e.g.*

pp. 12-13 of the Appeal Brief. The Examiner failed to address this argument.

Instead, the Examiner mischaracterizes appellant's argument as an argument that

"Spicer does not describe 'a first client and a second network client.'" The Appeal

brief contains the following on page 13.

> The cited section of Spicer describes that multiple points
> of presence (POPs) can be connected to a network.
> Although Spicer describes that a given geographic
> location, such as a metropolitan area, is served by
> multiple network service providers and each network
> service provider provides a POP, the cited section of
> Spicer does not describe that measurements between one
> POP and a server can be used for routing
> communications from a separate POP that is physically
> proximate to the first POP.

Appellant is not arguing that Spicer does not describe multiple POPs, but that

Spicer does not describe selecting a server for a first client based on measurements

between a second client and a plurality of servers, where the second client is

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[1] The original Appeal Brief was filed October 18, 2006 and an Amended Appeal Brief was filed December 5, 2006. The original Examiner's Answer was filed February 8, 2007, and the original Reply Brief was filed April 2, 2007. Notices of Non-Compliant Appeal Brief were mailed on July 30, 2007 and August 3, 2007 which required a new claims appendix. A new claims appendix was filed on August 10, 2007 and the Supplemental Examiner's Answer was filed in response thereto. The term "Appeal Brief" used herein refers collectively to the Amended Appeal Brief and the new claims appendix.

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physically proximate to the first client.

The Appeal Brief argued against the Examiner's combination of Colby and Spicer by stating that the references use different criteria to select a server and that there was no citation as to how the differences in the different criteria could be resolved. For example, what to do if the performance measurement information used by Spicer contradicted the geographical or topological information used by Colby. The Examiner's Supplemental Answer did not address these arguments, but instead simply repeated the reasons for combination given in the Office Action dated June 30, 2005 verbatim.

The Appeal Brief argued against the Examiner's combination of Colby, Spicer and Jang by stating that Jang is directed to mobile telephones and Colby and Spicer are directed to computer networks and that there was no citation as to how differences in the signal formats and protocols used in the different networks could be reconciled. The Examiner's Supplemental Answer did not address these arguments, but instead simply repeated the reasons for combination given in the Office Action dated June 30, 2005 verbatim.

The Appeal Brief argued that the sections of Colby (Column 7, line 58-Column 8, line 15 and Column 16, lines 40-65) relied upon by the Examiner to reject Claims 32 and 64 do not describe the elements of the claims. The cited sections of Colby describe the selection of a server based upon the proximity of the server to the requesting client and the determination of flow pipe bandwidth. The cited sections of

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Colby do not describe the claimed elements of (i) determining physical distances between said network clients and the inferable network client and (ii) computing a weighted average of said latency measurements as a function of said distances, wherein said weighted average comprises an estimate of the latency between said network server and said inferable network client. The Examiner failed to address these arguments in the Examiner's Supplemental Answer.

III.   Conclusion

For at least the reasons given in the Appeal Brief and this Reply Brief, it is respectfully requested that the final rejection be reversed and that Claims 1-21, 32-53 and 64 be allowed.

A Request for Oral Hearing accompanied the Reply Brief filed April 2, 2007.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 11-0855, and please credit any excess fees to such deposit account.

Respectfully submitted,

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